

501.65 CONTRACTS - ISSUE OF FORMATION - DEFENSE OF INFANCY.¹

The (*state number*) issue reads:

"Was the defendant under the age of eighteen² at the time *he* entered into the contract with the plaintiff?"

(You will answer this issue only if you have answered the (*state number*)³ issue "Yes" in favor of the plaintiff.)

On this issue the burden of proof is on the defendant.⁴ This means the defendant must prove, by the greater weight of the evidence, that *he* was under the age of eighteen at the time *he* entered into the contract with the plaintiff.

(All of the evidence tends to show that the defendant entered into the contract with the plaintiff on (*state date*) and that the defendant [attained] [will attain] eighteen years of age on (*state date*).)

(It does not matter that the plaintiff did not know *he* was contracting with a minor.)⁵

(It does not matter that the defendant misrepresented *his* age to the plaintiff.)⁶

(It does not matter whether the defendant has returned or is even able to return the [money] [property] [*name other consideration*] originally obtained from the plaintiff.)⁷

Finally, as to the (*state number*) issue on which the defendant has the burden of proof, if you find by the greater weight of the evidence that the defendant was under the age of eighteen at the time *he* entered into the contract with the plaintiff, then it would be your duty to answer this

issue "Yes" in favor of the defendant.

If, on the other hand, you fail to so find, then it would be your duty to answer this issue "No" in favor of the plaintiff.

1. This instruction deals only with the circumstance where a defendant seeks to avoid a contractual obligation on the basis that he or she was a minor when the contract was entered into. Where the minor seeks not only avoidance but recovery of any consideration he or she paid, give N.C.P.I.-Civil 505.20 (Contracts-Issue of Minor's Claims for Restitution Where Contract is Disavowed).

2. Subject to certain statutory exceptions, "[a] minor is any person who has not reached the age of 18 years." N.C. Gen. Stat. § 48A-2.

3. See N.C.P.I.-Civil 501.01 (Contracts-Issue of Formation).

4. Infancy is an affirmative defense, and the burden of proof is on the minor. *Cole v. Wagner*, 197 N.C. 692, 699, 150 S.E. 339, 341 (1929) (dictum). Whether a person was an infant at the time of the contracting is a jury question. The assertion of the infancy defense is an act of "disaffirmance" or "disavowal" which has the effect of voiding the contract. In cases involving contracts other than real estate, the contract can be voided before the minor comes of age with the help of a guardian or other competent personal representative or by the minor himself after he comes of age. *McCormick v. Crotts*, 198 N.C. 664, 153 S.E. 152 (1930); *Collins v. Norfleet-Baggs, Inc.*, 197 N.C. 659, 150 S.E. 177 (1929) and *Gillis v. Whitley's Discount Auto Sales, Inc.*, 70 N.C. App. 270, 319 S.E.2d 661 (1984). If the subject matter of the contract involves real estate, however, neither the minor nor his guardian or other personal representative may exercise the power of disavowal until the age of majority is attained. *McCormick v. Leggett*, 53 N.C. 425 (1862).

5. *Gastonia Personnel Corp. v. Rogers*, 276 N.C. 279, 284, 172 S.E.2d 19, 23 (1970) (quoting *McCormick*, 198 N.C. at 668-69, 153 S.E. at 152).

6. *Greensboro Morris Plan Co. v. Palmer*, 185 N.C. 109, 116 S.E. 261 (1923); *Carolina Interstate Bldg. & Loan Ass'n v. Black*, 119 N.C. 323, 327, 25 S.E. 975, 976 (1896); *Gillis*, 70 N.C. App. at 278, 319 S.E.2d at 666.

7. *Fisher v. Taylor Motor Co.*, 249 N.C. 617, 620, 107 S.E.2d 94, 97 (1959) (citing *Collins*, 197 N.C. at 660, 150 S.E. at 177-78). This statement is valid only if the minor is not counterclaiming for restitution of what he has paid or the property he has given up. See n. 1.